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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,514	03/29/2001	Jitao Zou	43922	8673
24247	7590	02/24/2005	EXAMINER	
BAUM, STUART F				
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/623,514

Applicant(s)

ZOU ET AL.

Examiner

Stuart F. Baum

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4,6,8,9,11-16,18,23-31,34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,4,6,8,9,12,24-31 and 39 is/are allowed.
- 6) ☒ Claim(s) 11, 13-16,18,23,34 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment and declaration of David Taylor filed 12/1/2004 has been entered.
2. Claims 2, 4, 6, 8-9, 11-16, 18, 23-31, 34, 36-39 are pending.
Claims 36-39 have been newly added.
3. Claims 2, 4, 6, 8-9, 11-16, 18, 23-31, 34, 36-39 are examined in the present office action.
4. Rejections and objections not set forth below are withdrawn.
5. The text of those sections of Title 35, U.S. Code not included in this office action can be found in a prior office action.

Claim Rejections - 35 USC § 102

6. Claims 11, 13-16, 18, 23, 34 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Lassner et al (June, 1998, U.S. Patent 6,444,876 B1). This rejection is maintained for the reasons of record set forth in the Official action mailed 7/1/2004. Applicant's arguments filed 12/1/2004 have been fully considered but they are not persuasive.

The declaration of Dr. David Taylor contends that Lassner et al do not disclose any working examples of transgenic plant seeds. Applicants also contend that Lassner et al do not provide guidance for one of skill in the art to how to use a plant seed having a nucleic acid encoding a polypeptide having diacylglycerol acyltransferase activity (page 7, 4th paragraph).

The Office contends that claims from an issued patent are presumed to be enabled.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 36 and dependent claims 37 and 38 are directed to non-statutory subject matter.

This rejection is made because the claim is drawn to "a plant cell comprising a means for encoding a polypeptide having diacylglycerol acyltransferase activity" which does not indicate that the "hand of man" was involved in the invention and it reads on any plant cell from a seed.

8. Claims 2, 4, 6, 8-9, 24-31 and 39 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest an isolated nucleic acid molecule encoding a polypeptide having diacylglycerol acyltransferase activity, wherein the isolated nucleic acid molecule comprises a sequence according to SEQ ID NO:1 or SEQ ID NO:3, a vector comprising said nucleic acid molecule, the plasmid pDGATcDNA or pDGATgene having accession number ATCC PTA989 or ATCC PTA988, a plant or plant seed, a method of producing a transgenic plant comprising said nucleic acid molecule and a method of changing the oil content, acyl composition or diacylglycerol/triacylglycerol ration of the seed oil of plant seeds comprising transforming a plant with said nucleic acid molecule.

9. Claims 2, 4, 6, 8-9, 12, 24-31 and 39 are allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 571-272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Stuart F. Baum Ph.D.
Patent Examiner
Art Unit 1638
February 17, 2005


ELIZABETH MCELWAIN
PRIMARY EXAMINER